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Supreme Court of the United States

October Term, 1978
No. 78-1335

VILLAGE OF SCHAUMBURG,

Petitioner,

vs.

CITIZENS FOR A BETTER ENVIRONMENT, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Motion for Leave to File Brief Amicus Curiae on Behalf of Los Angeles Council of National Voluntary Health Agencies; and Brief Amicus Curiae of Los Angeles Council of National Voluntary Health Agencies.

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The Amicus Curiae.

Los Angeles Council of National Voluntary Health Agencies, a nonprofit association the members of which are 27 Los Angeles County affiliates of national health charities.

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On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

Motion for Leave to File Brief Amicus Curiae.

On behalf of Los Angeles Council of National Voluntary Health Agencies (the "Los Angeles Council"), leave is hereby requested to file the attached brief *amicus curiae* in the above-captioned action, in support of the respondents. The attorney for the respondents has consented to the filing of the attached brief. The consent of the attorney for the petitioner was requested but refused.

The Los Angeles Council is a nonprofit association the members of which are 27 affiliates of national health charities. The members of the Los Angeles Council all operate in, and engage in fund raising activities in, Los Angeles County, California.

The direct and immediate interest of the Los Angeles Council in this case arises from the following facts:

1. With respect to charitable fund raising, the County of Los Angeles is the most active area in the nation insofar as the number of charities, insofar as the amount of funds raised for charity, and insofar as the number of municipalities regulating charity. In 1978, 2798 charities raised more than $113 million in the City of Los Angeles alone; and the City of Los Angeles is just one (albeit by far the largest, of course) of 79 municipalities in Los Angeles County.

2. Of these 79 municipalities, roughly 35 have ordinances regulating fund raising by charities. These 35 or so ordinances impose upon a charity seeking to solicit funds on a county-wide basis a maze of requirements which vary widely (and often conflict) from municipality to municipality. Taken together, these ordinances impose an incredible burden on a charity seeking to solicit county-wide and themselves greatly add to the charity's administrative expenses.

3. The municipal ordinances extant in Los Angeles County presently are, by and large, "disclosure"-type ordinances of the sort recommended by the Commission on Private Philanthropy and Public Needs.[a] However, since these ordinances are constantly being revised and updated, it is clear that a decision of this Honorable Court validating a percentage-limitation ordinance of the sort involved in the case at bar would very soon result in the amendment of a myriad of ordinances in Los Angeles County to include percentage limita-

[a]COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS, REPORT—GIVING IN AMERICA—TOWARD A STRONGER VOLUNTARY SECTOR 162-166 (U. S. Treasury Dept. 1975).

tions, thereby subjecting the members of the Los Angeles Council (and the other charities which solicit beyond the boundaries of a single city) to a geometric increase in the impact of municipal fund-raising ordinances. In fact, many charities performing clearly beneficial functions simply will be unable to solicit funds in certain parts of Los Angeles County.

4. Accordingly, a decision of this Honorable Court upholding the ordinance involved in the case at bar would have a uniquely severe impact on charitable activities in Los Angeles County—where the members of the Los Angeles Council operate; and the Los Angeles Council has unique expertise to lend to this Honorable Court in the case at bar.[b]

As was true of The Coalition of National Voluntary Organizations and certain of its members (who have submitted a brief *amicus curiae* in the case at bar), the Los Angeles Council's desire to submit a brief separate from the respondent's brief herein is based upon the fact that the Los Angeles Council has as its members a broad spectrum of organizations insofar as size, age, fund raising methods and type of program are concerned, while the respondents herein represent only

[b]The attorney for the Los Angeles Council also has particular expertise concerning the questions presented by the case at bar, having authored the chapter on "Relations with Government" of the California State Bar's Handbook on California Nonprofit Corporations (California Continuing Education of the Bar, 1969), having drafted portions of the charitable solicitation provisions of the Municipal Code of the City of Los Angeles, having served as a consultant to the City of Santa Monica, California concerning its charitable solicitation ordinance, having served as a member of the California Attorney General's Task Force on Charitable Solicitation Legislation, having served as a member of the California Attorney General's Committee on Charitable Reporting Standards and having lectured extensively as a member of California State Bar panels on nonprofit corporations.

one type of organization subject to government regulation of fund raising. Since the Schaumburg ordinance and other percentage-limitation ordinances affect organizations of many types different from the respondent organization and have implications on fund raising activities in addition to door-to-door solicitation, the Los Angeles Council seeks to bring a broader point of view before this Honorable Court.

The brief *amicus curiae* which the Los Angeles Council seeks leave to file will not duplicate the arguments set forth in the aforementioned brief *amicus curiae* submitted by The Coalition of National Voluntary Organizations and certain of its members. Rather, the Los Angeles Council's brief will (1) give specific illustrations of the unreasonableness of the limitation on charities' First Amendment rights posed by the Schaumburg ordinance and (2) argue that the donor's First Amendment rights are unreasonably infringed by Schaumburg-type ordinances.

In addition to requesting permission to file a brief *amicus curiae*, the Los Angeles Council also requests permission for its attorney to participate in oral argument.

ARNOLD H. GOLD,
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Attorney for Amicus Curiae.

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Respondents.

Brief of Amicus Curiae.

This brief *amicus curiae* is submitted by Los Angeles Council of National Voluntary Health Agencies on the side of and in support of respondents.

Interest of the Amicus Curiae.

The *amicus curiae* is a nonprofit association the members of which are 27 affiliates of national health charities. The members of the *amicus curiae* all operate in, and engage in fund raising activities in, Los Angeles County, California.

With respect to charitable fund raising, the County of Los Angeles is the most active area in this nation—insofar as the number of charities, insofar as the amount of funds raised for charity, and insofar as the number of municipalities regulating charity. In 1978, 2798 charities raised more than $113 million in the City of Los Angeles alone; and the City of Los Angeles

is just one (albeit by far the largest, of course) of 79 municipalities in Los Angeles County. Approximately 35 of these municipalities have ordinances regulating fund raising by charities. These 35 or so ordinances impose upon a charity seeking to solicit funds on a county-wide basis a maze of requirements which vary widely (and often conflict) from municipality to municipality. Taken together, these ordinances impose an incredible burden on a charity seeking to solicit county-wide and themselves greatly add to the charity's administrative expenses.

The municipal ordinances extant in Los Angeles County presently are, by and large, "disclosure"-type ordinances of the sort recommended by the Commission on Private Philanthropy and Public Needs.[1] However, since these ordinances are constantly being revised and updated, it is clear that a decision of this Honorable Court validating a percentage-limitation ordinance of the sort involved in the case at bar would very soon result in the amendment of a myriad of ordinances in Los Angeles County to include percentage limitations, subjecting the members of the Los Angeles Council (and the other charities which solicit beyond the boundaries of a single city) to a geometric increase in the impact of municipal fund-raising ordinances.

[1]COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS, REPORT—GIVING IN AMERICA—TOWARD A STRONGER VOLUNTARY SECTOR 162-166 (U. S. Treasury Dept. 1975). The City of Los Angeles ordinance, quoted in *Rescue Army v. Municipal Court*, 331 U.S. 549, 554-564 (1947), has served as a model for "disclosure"-type ordinances throughout the nation.

In fact, many charities performing clearly beneficial functions simply will be unable to solicit funds in certain parts of Los Angeles County.

Accordingly, a decision of this Honorable Court upholding the ordinance involved in the case at bar would have a particularly severe impact on charitable activities in Los Angeles County—where the members of the *amicus curiae* operate.

The particular interest of the *amicus curiae* in submitting a statement of position separate from the respondents herein is that the *amicus curiae* has as its members a broad spectrum of organizations insofar as size, age, fund raising methods and type of program are concerned, while the respondents herein represent only one type of organization subject to government regulation of fund raising. Since the Schamburg ordinance and other percentage limitation ordinances affect organizations of many types different from the respondent organization and have implications on fund raising activities in addition to door-to-door solicitation, the *amicus curiae* seeks to bring a broader point of view before this Honorable Court.

The within brief does not duplicate the arguments set forth in the brief *amicus curiae* submitted by The Coalition of National Voluntary Organizations and certain of its members. While the Los Angeles Council of Voluntary Health Agencies joins in the arguments set forth in the latter brief, the Los Angeles Council submits the following additional arguments for consideration by this Honorable Court.

ARGUMENT.

1. In Determining the Reasonableness of a Restraint on First Amendment Rights, Whether It Is so Broad as to Unnecessarily Obstruct Beneficial Activities Is a Critical Factor; the Schaumburg Ordinance Fails This Test.

A devastating earthquake has just occurred in Guatemala. Tens of thousands of people are left without shelter. Famine and pestilence abound. The food supply will last for only three days in most localities, and medical supplies are grossly inadequate to meet the needs of the injured. If help comes within two weeks, thousands of lives will be saved—the lives of people who will die if help comes in three weeks rather than two. Funds to purchase and fly in food and medical supplies must be raised *immediately*. The National Alliance of Guatemalan-American Social Clubs mobilizes and conducts an emergency public appeal for funds, using volunteers to send telegrams and place telephone calls across the United States and using a mix of volunteers and paid solicitors to solicit door-to-door. At a total cost of $200,000, this emergency appeal raises $500,000 within a week; and the $300,000.00 net proceeds are used to buy and fly to the devastated areas food and medical supplies which save 5,000 lives. The National Alliance could not solicit door-to-door in the Village of Schaumburg as a part of its emergency appeal.

Gray's Syndrome, a crippling disease attacking children from birth to age 5, is little known but afflicts an increasing number of victims. Virtually no research has been done on the disease. Fifteen parents of Gray's Syndrome children in Cook County, Illinois form Charity A to raise money for postgraduate fellowships for

medical research into the prevention and cure of the disease. Charity A contemplates raising $15,000.00 per year through door-to-door solicitations, at an annual cost of $3,000.00 for postage, printing, telephone, shared office rental and the salary of a secretary/bookkeeper eight hours per week. However, during its first year of operations it will be necessary for Charity A to spend an extra $1,000.00 of its revenues on a desk, a chair, a typewriter, an initial supply of printed material (estimated to last 3 years) and a security deposit on the office lease. During its first year of operations, Charity A cannot solicit door-to-door in the Village of Schaumburg.

In May of 1973, and during each May of the preceding 35 years, through door-to-door solicitation in Schaumburg, the Mothers' Club of Schaumburg High School has raised $1,500.00 for college scholarships to be awarded each June to promising needy graduating seniors from Schaumburg High. It had no fund raising or administrative expenses whatsoever until 1974 when, in order to comply with subsections (e) and (f) of Section 22-20 in newly enacted Article III of Chapter 22 of the Schaumburg Village Code, it needed to hire an attorney to take the one-time-only steps necessary to obtain the statement of compliance with Illinois charitable solicitation statutes and proof of tax exempt status under United States Internal Revenue Code Section 501(c)(3) required by said subsections (e) and (f). The attorney for the Mothers' Club is willing to perform the necessary services at a reasonable fee: $500.00, payable out of the proceeds to be raised in the year in which the services are performed. The Mothers' Club could not solicit door-to-door in Schaumburg in 1974, and in fact can never

solicit door-to-door in Schaumburg since it will never be permitted to raise the funds it needs to pay its attorney to comply with the Village Code's conditions precedent to raising funds.

Charity B and Charity C are Cook County affiliates of major national health charities. Each concentrates on a different disease. Each conducts an outstanding program of medical research and public education concerning its particular disease. Each raises $750,000.00 annually. Charity B solicits by person-to-person contact and in the course thereof uses 15,000 hours of volunteer time annually (much of which would otherwise be devoted to service to other charities) but spends only $185,000.00 per year on fund raising and "administrative" costs. Charity C primarily uses direct mail solicitation to raise funds—a fund raising approach which is quite effective but generally costs more money per dollar raised than person-to-person solicitation. However, Charity C uses substantially no volunteer time in fund raising. Because of its direct mail approach, Charity C's annual fund raising and "administrative" costs total $190,000.00. Charity B, which uses up 15,000 hours of volunteer time to save $5,000.00 in costs, can solicit door-to-door in the Village of Schaumburg. Charity C cannot.

Charity D has as its goal crime prevention. It routinely sends off-duty police officers door-to-door to distribute educational material and to review a brief household security checklist with the resident's occupants. It spends sixty percent of its funds on reasonable compensation of these police officers for the time they spend on the charity's behalf. By reason of Charity D's efforts, the household burglary rates drop drastically in each locale in which Charity D operates. Although

Charity D can conduct its educational activities door-to-door in the Village of Schaumburg, it cannot solicit funds during these door-to-door visits no matter how low-key the solicitation.

The foregoing are fictional but frequently encountered examples of clearly beneficial charitable activities involving perfectly appropriate, reasonable and common (under the circumstances) fund raising and "administrative" (as defined by the Schaumburg ordinance) expenses. Yet in each case the charity would be prohibited from soliciting door-to-door in the Village of Schaumburg.

One of the principal flaws in the Schaumburg ordinance is that it proceeds upon the assumption that there is a necessary reverse correlation between the fund raising and "administrative" expenses of a charity and its benefits to society. As the foregoing examples demonstrate, no such necessary correlation exists. Beneficial charitable activities may entail fund raising or "administrative" expenses higher than any arbitrary percentage because of the emergency nature of the need, because of the newness of the charity, because the charity elects to use volunteer time sparingly (saving it for other charities) by using a slightly more expensive (in terms of dollars but not in terms of volunteer time) method of fund raising, because the charity's program contemplates the dissemination of beneficial information through salaried personnel, or because of a myriad of other reasons in no way indicating that the charity is "unworthy."

In determining whether a restraint imposed on the exercise of First Amendment rights is reasonable, a critical factor is whether it is so broad as to unneces-

sarily obstruct beneficial activities. *Cantwell v. Connecticut,* 310 U.S. 296, 304 (1940); *Schneider v. State,* 308 U.S. 147, 161-162, 164 (1939). This factor requires invalidation of the Schaumburg ordinance:

A. As illustrated above, the Schaumburg ordinance clearly obstructs charities whose activities are beneficial notwithstanding their "more-than-25%" expenses.

B. Notwithstanding the argument at page 9 of Petitioner's Brief that the public needs protection from "fraud, crime and undue annoyance by door-to-door solicitation on private property" by non-charities masquerading as charities, there are other, more direct ways of affording such protection to the public—ways which do not unreasonably obstruct the organization whose activities are truly beneficial:

> "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent." *Cantwell v. Connecticut,* 310 U.S. 296, 306 (1940).

Or,

> "Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than [other means], the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." *Schneider v. State,* 308 U.S. 147, 164 (1939).

C. The test is one of balancing. *Martin v. Struthers,* 319 U.S. 141, 143 (1943). It is respectfully submitted that when the existence of numerous more direct ways of protecting the public is taken into consideration, the scale clearly tips in favor of the right of free expression and against the constitutionality of the ordinance in question.

2. The Schaumburg Ordinance Unconstitutionally Abridges the Donor's Rights of Free Expression.

The Petitioner's Brief discusses the case at bar as though it involved only the First Amendment rights of *charities.* The First Amendment rights of the *persons solicited* are also obstructed by the Schaumburg ordinance.

The First Amendment, of course, protects the right to *know. Martin v. Struthers,* 319 U.S. 141, 143 (1943); and other cases collected in *Minarcini v. Strongsville City School District,* 541 F.2d 577, 583 (6th Cir. 1976). The following observation by Mr. Justice Black in the *Martin* case applies with equal vigor to the case at bar:

> "We are faced in the instant case with the necessity of weighing the conflicting interests of the Appellant in the civil rights she claims, *as well as the right of the individual householder to determine whether he is willing to receive her message,* against the interest of the community which by this ordinance offers to protect the interests of all of its citizens, whether particular citizens want that protection or not." [Emphasis added.] *Martin v. Struthers,* 319 U.S. 141, 143 (1943).

The right of the individual householder in the Village of Schaumburg *to decide whether to receive the message*

of the solicitors of the Citizens for a Better Environment ("CBE") must be taken into consideration in performing the balancing test discussed in Point 1, *supra.*

Likewise, the right of the individual householder in the Village of Schaumburg, once he has decided to hear CBE's message, *to decide to contribute* to CBE must also be taken into consideration in performing that balancing test. If a solicitor wearing a sandwich board approaches a prospective donor, the sandwich board proclaiming in letters six inches high that the solicitor's charity spends on fund raising and administrative costs 90% of every dollar collected, and if the solicitor further discloses to the prospective donor not only what the charity's beneficial activities are but also all other information required to assure an enlightened decision by the prospective donor as to whether or not to donate, *the prospective donor has the right to make that decision*— including the right to donate if he feels that the use to which the remaining 10% will be put fulfills a need so critical that using up 90% on fund raising and administrative costs is justified—and the State has insufficient justification for depriving the prospective donor of that right.

In summary, it is respectfully submitted that in testing percentage limitation ordinances, the following four factors taken together far outweigh the public's need for protection against fraud, crime and undue annoyance:

(a) The existence of many other, more direct, means of providing that protection;

(b) The charity's rights of free expression;

(c) The individual householder's right to know—to decide whether to receive the charity's message; and

(d) The individual householder's right to decide to contribute.

Conclusion.

For the reasons stated above and in the briefs of Respondent and the other *amici curiae,* the Schaumburg ordinance is unconstitutional on its face. The judgment of the courts below should therefore be affirmed.

Respectfully submitted,

ARNOLD H. GOLD,
PACHTER, GOLD & SCHAFFER,
Attorney for Amicus Curiae.